RIGHTS STUFF

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Do Marriage Amendments Prohibit Health Insurance Benefits for Non-Spouses?

In the past 20 years or so, many employers have begun offering health insurance benefits to their employees' same-sex partners, just as they offer the benefits to employees' spouses. At the same time, some states have passed laws or constitutional amendments that prohibit treating same-sex relationships similarly to marriages. Courts are now having to wrestle with how to apply these laws or amendments to benefits practices.

The State of Michigan's Civil Service Commission decided to extend health insurance benefits to employees' "other eligible adult individual." To qualify, the employee could not have a spouse who was eligible for health insurance benefits. The "other individual" has to be at least 18, not be a member of the employee's immediate family and have jointly shared the same residence as the employee for at least a year, but not as a tenant, boarder, renter or employee.

The state's attorney general sued, arguing that such benefits violate the state's marriage amendment, which prohibits recognizing any agreement other than the union of one man and one woman in marriage as a marriage or similar union for any purpose. He lost.

The Court said that the state's policy is "unambiguously completely gender-neutral." The "other eligible adult individual" entitled to health insurance benefits might be a same-sex partner, but might be an opposite sex girlfriend or boyfriend, non-romantic good friend or housemate. The Court said "We would not think it impossible, or even unlikely, that any two people of any sex might share a friendship close enough to give rise to a shared domicile and a desire to share health care benefits. Considering the present state of the economy and prevalence of shared housing for reasons that may involve simple economics, we think it unreasonable to predict same-sex domestic partnerships to necessarily be the most-benefitted group under this policy."

The attorney general also argued that the insurance benefits violated the equal protection clause of the constitution. The restrictions keep married employees from sharing their benefits with anyone but their spouses but allow unmarried employees to share their benefits with a friend. They keep an employee from sharing his benefits with his biological brother but allow him to share his benefits with a fraternity brother. The Court agreed that

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It's Legal to Fire Your Employee Because Your Wife Has Concerns About Your Office Relationship

Melissa Nelson began working for James Knight, a dentist, in 1999 as a dental assistant. (All of the dental assistants he's ever employed have been female.) She worked for him for more than ten years, and Knight said she was a good dental assistant. She said he treated her with respect, and she believed him to be a person of high integrity.

Several times, Knight complained to Nelson that her clothing was too tight and distracting. She denied that her clothes were inappropriate, but followed his instructions to put on a lab coat. They began texting each other after work hours, about both professional and personal matters. They both had children, and some of the texts were about their children.

On one occasion, Knight told Nelson that if she saw that his pants were bulging, she would know that her clothes were too tight. Another time, he texted her and told her that the shirt she had worn that day was too tight. She replied that he was not being fair, and he replied that it was good that she had not also worn tight pants that day, or he "would get it coming and going." When she said something about not having intimate relations frequently, he said, "That's like having a Lamborghini in the garage and never driving it." He once texted her to ask how often she had orgasms. She didn't respond, but she didn't tell him to stop, either.

Knight went on vacation with his children in 2009. His wife stayed home and learned that Knight and Nelson had been texting each other while he was out of town. She demanded that he fire Nelson. The Knights met with their pastor, who agreed that Mr. Knight should fire Nelson. Mrs. Knight saw Nelson as "a big threat to our marriage."

Knight called Nelson into a meeting. His pastor was also present. He told her that it was in the best of interest of both of them, and of their families, if they no longer worked together. He gave her one month's severance pay.

Nelson sued under the Iowa civil rights law, and in a case that received quite a bit of media attention, the all-male Iowa Supreme Court ruled in the dentist's favor. Courts have long held that "'sexual favoritism,' where one employee was treated more favorably than members of the opposite sex because of a consensual relationship with the boss, does not violate laws prohibiting sex discrimination in the workplace." Similarly, the Court said, treating one employee less favorably because of the relationship does not violate the law.

The Court found that Knight fired Nelson because of his feelings towards her, not because of her sex. He replaced her with another woman. The Court said his decision might not have been fair, but sex discrimination laws do not authorize "courts to declare unlawful every arbitrary and unfair employment decision." The Court said that it "is undisputed...that Nelson was fired because Jeanne Knight, unfairly or not, viewed her as a threat to her marriage," not because of her sex.

A concurring opinion said, "differential treatment based on an employee's status as a woman constitutes sex discrimination, while differential treatment on account of conduct resulting from the sexual affiliations of an employee does not form the basis for a sex discrimination claim." This opinion said that it was clear that Nelson engaged in banter with Knight that was consensual and "beyond the reasonable parameters of workplace interaction. . . Even if Nelson was fired because Dr. Knight was physically attracted to her, the attraction and resulting threat to the Knights' marriage surfaced during and resulted from the personal relationship between Nelson and Dr. Knight, and there is no evidence. . . tending to prove the relationship or Nelson's termination were instead consequences of a gender-based discriminatory animus." In other words, Knight fired Nelson because of their relationship, not because of her sex.

The case is Nelson v. Knight, 11-1857 (Iowa Supreme Court 2013). If you have any questions about sex discrimination, please contact the BHRC.

Marriage Amendments and Health Insurance Benefits

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these restrictions were "absurd and unfair." But all that the Civil Service Commission had to do was persuade the Court that it had a rational basis for these distinctions, a low standard of review. The Commission showed that it had to draw the line somewhere, and the way it drew those lines was not arbitrary or unrelated to the state's interest.

The Court said that the marriage amendment does not prohibit offering same-sex couples employment benefits "so long as that receipt is not based on the employer's recognition of that relationship as a 'marriage or similar union.'"

A dissent said that the Commission's plan failed even the rational basis test because it "makes it impermissible for one group of citizens, as opposed to another, to receive a governmental benefit, without there being any identifiable, rational basis for doing so."

The case is Attorney General v. Civil Service Commission, 2013 WL 85805 (Mich. App. 2013).

Many companies and governments in Indiana - including the City of Bloomington - offer domestic partnership insurance benefits to their employees. Indiana is considering an amendment to its constitution that would be similar to Michigan's marriage amendment, but the legislature decided not to consider it during the 2013 legislative session, given related cases pending before the U.S. Supreme Court at the time. If the state legislature passes the amendment next year, it will then be placed on the ballot for the voters' consideration.

Is Showing Up on Time an Essential Job Duty?

Rodney McMillan is a man with schizophrenia who worked for New York City as a case manager. His job required him to conduct annual home visits, process social assessments, recertify clients' Medicaid eligibility, make referrals to other agencies and address client concerns.

The office's flex-time policy allowed employees to start their work day between 9 and 10. They were not counted late unless they got to work after 10:15. McMillan said he wakes up each morning between 7 and 7:30, but the medicines he has to take each morning make him "drowsy" and "sluggish." As a result, he often arrives to work late, sometimes after 11 a.m. For at least ten years, the City explicitly or tacitly approved his late arrivals. But in 2008, a new supervisor decided she could not continue to tolerate his lateness. She said he could not work after 6 p.m. because no supervisor was present in the office then, and thus he had to get to work before 11 a.m.

McMillan's doctor said that his medication schedule should not be altered, and thus he continued to have problems getting to work on time. He was terminated for his attendance problems. He appealed that decision internally and eventually was suspended for thirty days without pay but kept his job. He sued, alleging disability discrimination in employment.

The Court said that usually, punctuality is an essential job requirement. But in this case, McMillan showed that his employer was quite flexible in its time requirements. They tolerated his lateness for ten years, and let all employees show up between 9 and 10:15. He could possibly bank time by working through lunch and after usual hours to compensate for the times he got to work late. The City lost its motion for summary judgment, and the case will now proceed to trial or settlement.

The case is McMillan v. City of New York, 2013 WL 779742 (C.A. 2 NY 2013).

Are Employers Required to Let Full-Time Employees Work Part-Time as a Reasonable Accommodation?

Darla White started working for Standard Insurance Company as a full-time certified insurance service representative in 2003. In September of 2007, she injured her back and went on short-term disability. She returned to work a few months later with medical restrictions that said she could not work more than four hours a day.

But White had problems working four hours a day, missing quite a bit of work in January and February of 2008. She was fired, but her supervisor told her that her job would stay open until the end of March, should she be able to return to full-time work at that point. She did not return to work but instead sued the company.

She argued that she was a qualified person with a disability and that her employer had failed to provide her with a reasonable accommodation by letting her work part-time. The Americans with Disabilities Act (ADA) says that an employee is protected by the law if she has a disability and is able to perform the essential functions of the job with or without a reasonable accommodation. One of the essential functions of White's job was to work full-time. The company had never had a person do her job on a part-time basis. When she left early, other employees had to cover her accounts, and the company had to pay them for overtime hours. The Court said that the employer "was not required to create a part-time position where none previously existed."

The case is White v. Standard Insurance Company, 2013 WL 3242297 (6th Cir. 2013).

Airport Shuttle Company Has to Allow Service Dog

A woman who has a service dog reserved a shuttle ride from the airport to her hotel, paying the required $91 fee in advance. But when the agent realized she had a service dog, he changed the booking to an "exclusive" van and charged her $125. He said he did so because he believed "no one would want to travel with a service animal."

Under the Americans with Disabilities Act (ADA), providers of public accommodations such as airport shuttle companies have to allow service dogs to accompany people with disabilities. They cannot charge extra fees for doing so. The Department of Justice determined that the agent had violated the ADA when he refused to allow the service animal on a shared ride and when he charged the woman an additional fee. (The company has a nondiscrimination policy which mentions service animals, but the agent did not follow the policy.) As part of a settlement, the company agreed to improve its policy, to distribute the policy to all employees and train them on it, to post a sign saying "service animals welcome" at their counters and to pay the woman $1,000.

Lancôme Sued for Failing the Sabbath Test

Rorie Weisberg is an Orthodox Jew who abides by Jewish law that prohibits working on the Sabbath, from sundown on Friday until sundown on Saturday. Jewish law defines work quite broadly, including pushing an elevator button and apparently applying make-up.

Ms. Weisberg bought foundation for $45 from Lancôme called Teint-Idole Ultra 24H. Lancôme's ads say the foundation is "re-touch-free" for the "velvety finish you love for 24-hour lasting perfection and comfort." Based on these claims, Ms. Weisberg purchased the product so that she would not have to reapply it during the Sabbath. She tested the product before the Sabbath, applying it at 5 p.m. on a Thursday. She felt that the product made her skin look very cakey. By Friday, she said, her skin was shiny. The make-up she had applied had faded, making her skin look uneven. Very little of it remained on her face. She removed what was left at about 3 p.m. on Friday. She filed a class-action suit against Lancôme for $5 million, seeking to obtain refunds, with interest, for everyone in the U.S. who had purchased the product.